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OFFICE OF HEARINGS AND APPEALS

Hearing Officer's Decision

Name of Case:	Personnel Security Hearing
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Case Number:	TSO-0206

This Decision concerns the eligibility of XXXXXXXXXXXX (hereinafter referred to as "the individual") to hold an access authorization (or "security clearance") under the regulations set forth at 10 C.F.R. Part 710, entitled "Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material." As set forth below, it is my decision, based on the evidence and testimony presented in this proceeding, that the individual's access authorization should be granted.

I. Background

The individual is employed by a DOE contractor. The contractor requested an access authorization for the individual, but a background investigation uncovered information regarding past drug and alcohol use that created a security concern. In order to resolve that concern, DOE conducted a Personnel Security Interview (PSI) with the individual in May 2004. In July 2004, a DOE consultant-psychiatrist evaluated the individual and diagnosed him as alcohol dependent, in sustained partial remission and without adequate evidence of rehabilitation or reformation.

In November 2004, DOE informed the individual how to proceed to resolve the derogatory information that had created a doubt regarding his eligibility for access authorization. Notification Letter (November 8, 2004). The Notification Letter stated that the derogatory information regarding the individual falls within 10 C.F.R. § 710.8 (h), (j) and (k) (Criteria H, J, and K). DOE invoked Criterion H based on information in its possession that the individual has an illness or mental condition that causes or may cause a significant defect in his judgment or reliability. Notification Letter at 4. The DOE Operations Office invoked Criterion J on the basis of information that the individual has been or is a user of alcohol habitually to excess, or has been diagnosed by a board-certified psychiatrist, or other licensed physician or a licensed clinical psychologist as alcohol dependent or as suffering from alcohol abuse. 10 C.F.R. § 710.8 (j). In this regard, the Notification Letter cites the diagnosis of the DOE consultant-psychiatrist that the individual suffers from alcohol dependence, which in the opinion of the DOE consultant-psychiatrist is an illness or mental condition that causes or may cause a significant defect in the individual's judgment or reliability. Criterion K is invoked when a person has allegedly trafficked in, sold, transferred, possessed, used, or experimented with a drug or other substance listed in the

Schedule of Controlled Substances except as prescribed or administered by a physician or as otherwise authorized by Federal law. 10 C.F.R. § 710.8 (k). The DOE Operations Office invoked Criterion K based on the individual's admission of illegal drug use during his PSI.

In a letter to DOE Personnel Security, the individual exercised his right under Part 710 to request a hearing in this matter. 10 C.F.R. § 710.21(b). The Director of OHA appointed me as Hearing Officer in this case. After conferring with the individual and the appointed DOE counsel, 10 C.F.R. § 710.24, I set a hearing date. At the hearing, the DOE consultant-psychiatrist (DOE psychiatrist) testified on behalf of the agency. The individual testified on his own behalf and also elected to call his alcohol counselor, a forensic psychiatrist and a colleague as witnesses. The transcript taken at the hearing shall be hereinafter cited as "Tr." Various documents that were submitted by the DOE counsel during this proceeding constitute exhibits to the hearing transcript and shall be cited as "Ex." Documents that were submitted by the individual during this proceeding are also exhibits to the hearing transcript and shall be cited as "Indiv. Ex."

II. Analysis

The applicable regulations state that "[t]he decision as to access authorization is a comprehensive, common-sense judgment, made after consideration of all relevant information, favorable or unfavorable, as to whether the granting of access authorization would not endanger the common defense and security and would be clearly consistent with the national interest." 10 C.F.R. § 710.7(a). Although it is impossible to predict with absolute certainty an individual's future behavior, as the Hearing Officer I am directed to make a predictive assessment. There is a strong presumption against the granting or restoring of a security clearance. *See Department of Navy v. Egan*, 484 U.S. 518, 531 (1988) ("clearly consistent with the national interest" standard for the granting of security clearances indicates "that security determinations should err, if they must, on the side of denials"); *Dorfmont v. Brown*, 913 F.2d 1399, 1403 (9th Cir. 1990), *cert. denied*, 499 U.S. 905 (1991) (strong presumption against the issuance of a security clearance).

I have thoroughly considered the record of this proceeding, including the submissions of the parties, the evidence presented and the testimony of the witnesses at the hearing convened in this matter. In resolving the question of the individual's eligibility for access authorization, I have been guided by the applicable factors prescribed in 10 C.F.R. § 710.7(c): the nature, extent, and seriousness of the conduct; the circumstances surrounding the conduct, to include knowledgeable participation; the frequency and recency of the conduct; the age and maturity of the individual at the time of the conduct; the voluntariness of the participation; the absence or presence of rehabilitation or reformation and other pertinent behavioral changes; the motivation for the conduct; the potential for pressure, coercion, exploitation, or duress; the likelihood of continuance or recurrence; and other relevant and material factors. After due deliberation, it is my opinion that the individual's access authorization should be granted because I conclude that such a grant would not endanger the common defense and security and would be clearly consistent with the national interest. 10 C.F.R. § 710.27(a). The specific findings that I make in support of this determination are discussed below.

A. Findings of Fact

The individual began drinking alcohol while he was in high school. PSI at 29, 34. At the age of 17 he was arrested for criminal damage to property, and admitted that he was intoxicated at the time. The charge was dismissed. Ex. 2 at 3. In 1995, after graduation, he entered the military. PSI at 31. In the military, he would get intoxicated once or twice a month. *Id.* at 35. In 1996, he was charged with driving under the influence of alcohol and ordered to attend a one week alcohol class in order to reinstate his driving privileges. PSI at 60-63; Ex. 2 at 3. In 1999 he had a verbal confrontation with an officer overseas while he and the officer were intoxicated, and received liberty restrictions. PSI at 27-28. In 2000, at the end of his military service, the individual used the drug ecstasy four times. PSI at 37.

The individual was honorably discharged from the military in September 2000, and when he returned home he drank on weekends only. *Id.* at 40. However, in May 2001, the individual started socializing with his colleagues at a new job and drank alcohol more often. *Id.* at 40-43. In August 2001, the individual left his job and stopped going out as frequently in order to save money. *Id.* at 48. The individual lost two jobs in 2001 because of excessive absences caused by partying during the week. Questionnaire for National Security Positions (QNSP) at 7. In January 2002, the individual found a new job, discovered that his live-in girlfriend was pregnant, and decided to change his lifestyle. *Id.* at 50. Ex. 9. He began working for a DOE contractor in June 2002 and the contractor requested a clearance for him at that time. Ex. 9 at 3; Ex. 10. In September 2002, the individual's girlfriend gave birth to their daughter. Tr. at 88; Ex. 3 at 27; PSI at 138. The individual lived with and supported his girlfriend, their daughter, and the girlfriend's two children from a previous relationship. PSI at 144-150.

DOE conducted a PSI with the individual in May 2004 in order to resolve derogatory information that he had disclosed on the QNSP. Ex. 6. Around this time, the individual's daughter developed a medical problem and his girlfriend quit her job to stay at home and care for the child. PSI at 139. The individual disclosed that he had decreased his drinking to two weekends a month. PSI at 20-23. During the PSI, the individual agreed to be interviewed by the DOE psychiatrist at a later date. PSI at 154-155; Ex. 5. The individual had his last drink around May 22, 2004, the week after the PSI. Report at 22. In July 2004, two days prior to the psychiatric interview, the individual's daughter entered the hospital for surgery. Tr. at 88.

The DOE psychiatrist interviewed the individual for approximately two hours. Ex. 3 (Report). The DOE psychiatrist found that the individual presented adequate evidence of reformation from drug use. Report at 29. The DOE psychiatrist also concluded that the individual suffered from alcohol dependence in sustained partial remission. *Id.* In order to show adequate evidence of rehabilitation from this condition, the DOE psychiatrist recommended in his report that the individual either: (1) attend Alcoholics Anonymous (AA) with a sponsor at least once a week for a minimum of 100 hours in a year and abstain from alcohol for two years; or (2) complete a six month alcohol treatment program and abstain

for two years. *Id.* In order to demonstrate reformation from alcohol dependence, the individual would have to abstain for three years. *Id.* at 30.

The individual's two year old daughter died two weeks later in the intensive care unit of the hospital. Tr. at 85. In December 2004 the individual began attending sessions with the site alcohol counselor for guidance on his alcohol problem. Indiv. Ex. 3; Tr. at 45. At the time of the hearing, he had attended 24 sessions of alcoholism education and awareness training and had successfully passed 18 random drug and alcohol tests administered up until the date of the hearing. Tr. at 46-52.

B. DOE's Security Concerns

The excessive use of alcohol raises a security concern because of its intoxicating effect. "Because the use of alcohol at the very least has the potential to impair a user's judgment and reliability, individuals who use alcohol to excess may be susceptible to being coerced or exploited to reveal classified matters. These security concerns are indeed important and have been recognized by a number of Hearing Officers in similar cases." *Personnel Security Hearing*, OHA Case No. VSO-0417, 28 DOE ¶ 82,798 (2001), quoting *Personnel Security Hearing*, OHA Case No. VSA-0281, 27 DOE ¶ 83,030 at 86,644 (2000). In this case, the individual was diagnosed by a DOE psychiatrist as alcohol dependent and has a history of alcohol-related arrests. Therefore, DOE's security concerns are valid and the agency has properly invoked Criteria H and J in this case.

Criterion K deals with the use of illegal drugs. Illegal drug use may cause the individual to act in a manner that is inconsistent with the best interests of national security while under the influence of such substances. PSI at 115-116. Also, illegal drug use indicates a willingness to ignore the law that could be reflected in the clearance holder's attitude toward security requirements. See, e.g., *Personnel Security Hearing*, 28 DOE ¶ 82,816 (2001); *Personnel Security Hearing*, 28 DOE ¶ 82,756 (2000). The individual's drug use is well documented in the record, and validates the charge of Criterion K.

C. Hearing Testimony

1. The DOE Psychiatrist

The DOE psychiatrist testified at the beginning of the hearing that he had reviewed the individual's file prior to the July 2004 interview. Tr. at 14. According to the DOE psychiatrist, the individual met four criteria for alcohol dependence in 2001 and met two criteria in 2004. Tr. at 16-17. The DOE psychiatrist also found that the individual drank habitually to excess in 1994, 1995, and 1997-2004. *Id.* at 19. He further concluded that the individual no longer suffers from illegal substance abuse. *Id.* at 20. The individual told the DOE psychiatrist that he last consumed alcohol on May 22, 2004 and the DOE psychiatrist found the individual to be credible. *Id.* at 17. The DOE psychiatrist concluded that drug and alcohol screening were not required. *Id.* at 20. The DOE psychiatrist diagnosed the individual as alcohol dependent but in sustained partial remission. *Id.* at 15. In order to show adequate evidence of rehabilitation, the DOE psychiatrist recommended that the individual attend Alcoholics Anonymous (AA) for 100 hours and abstain from

alcohol for two years, or attend a six month alcohol treatment program and abstain for two years. *Id.* at 22. In order to show reformation, the individual must abstain for three years. *Id.* According to the DOE psychiatrist, two years of AA would translate into a 10% risk of relapse. *Id.* at 23-24. The individual showed a good prognostic sign for recovery by stopping smoking. Tr. at 38. The psychiatrist concluded that it was “more likely than not” that the individual would relapse in five years without the recommended program of rehabilitation. Tr. at 116.

2. Other Witnesses

As evidence of rehabilitation and reformation, the individual presented the testimony of a forensic psychiatrist, his alcohol counselor, and a colleague.

The alcohol counselor testified that the individual first met with him in December 2004 for guidance on his alcohol problem. Tr. at 45. At the time, the individual stated that he had been sober for 6 months. *Id.* at 56. The counselor concluded that the individual initially lacked insight into his problem, but was progressing well on his own and needed more alcohol education and relapse prevention strategies. *Id.* at 46. By the date of the hearing, he had met with the individual for 24 sessions, and had sent him for 18 random drug tests, all of which returned negative. *Id.* at 52, 56. The counselor described the factors that supported his conclusion that the individual is rehabilitated. First, the individual demonstrated a significant period of abstinence (18 months at the time of the hearing). Second, the individual, who had attended 24 counseling sessions at the time of the hearing, now understands alcoholism and how it has affected his life. At these sessions, which the individual continues to attend, the individual has learned strategies to avoid the temptations of alcohol. *Id.* at 60. Third, the counselor argues that the individual does not fit the diagnosis of alcohol dependence because he stopped drinking on his own, has not had any signs of withdrawal or cravings, and has the ability to learn from the consequences of his behavior. *Id.* at 51. Finally, the counselor emphasized strongly that despite the tragedy the individual has endured, he never turned to alcohol to ease his grief over his daughter’s death. *Id.* at 63. Many of their counseling sessions also deal with the grief that the individual continues to experience over the death of his toddler. *Id.*

The forensic psychiatrist reviewed the DOE psychiatrist’s Report in April 2005 and then conducted a forensic clinical interview of the individual in May 2005. Tr. at 83. He also talked to the alcohol counselor and attended the entire hearing. *Id.* The forensic psychiatrist concluded that the individual had an early problem with alcohol, but that he has abstained since May 2004 (18 months at the time of the hearing). *Id.* at 85. The forensic psychiatrist diagnosed the individual with alcohol dependence in sustained full remission. *Id.* As for negative factors, he cited a family history of alcohol – the individual’s father is an alcoholic and his sister had an alcohol problem, past drug abuse, and the anger and depression that the individual feels as a result of the death of his child. *Id.* at 90. However, the forensic psychiatrist concluded that the individual has a low risk of relapse based on the following mitigating factors. First, the forensic psychiatrist believes that the individual has had a positive experience in his treatment program and that he understands fully his alcohol problem. Second, he agrees with the DOE psychiatrist that the fact that the individual was able to stop smoking and is no longer dependent on nicotine is a good

prognostic sign for recovery from alcohol dependence. Third, the individual's heavy drinking occurred in his youth, and around the time of his military service. As he matured and picked up adult responsibilities, his alcohol consumption decreased. Fourth, even though the individual had experienced one of the worst traumas of life, the death of his child, he did not resort to alcohol to assuage his grief. *Id.* at 89. He also ended the relationship with the mother of his child in November 2004, and that breakup was very difficult. *Id.* at 89. In summary, the psychiatrist concluded that based on the individual's positive response to treatment, 18 months of abstinence, and low risk to resume drinking, the individual has demonstrated adequate evidence of rehabilitation and reformation from alcohol dependence. *Id.* at 90.

A colleague of the individual also testified on his behalf. He had supervised the individual for two years prior to the hearing and considers the individual to be trustworthy. The individual had admitted to the witness that he had an alcohol problem while he was in the military. *Id.* at 70-75. The witness has had substantial law enforcement experience in detecting symptoms of alcohol use, and has never detected alcohol use by the individual prior to reporting to work or on the job.

3. The Individual

The individual testified that he had his last drink in May 2004 and has not been tempted to drink since then. He stated that he no longer parties with people who drink, and that he has told all of his colleagues that he no longer drinks alcohol. *Tr.* at 120-122. He explained that he does not drink now because alcohol caused him many problems. He described a very close relationship with a cousin who drank heavily in the past, but no longer drinks alcohol. According to the individual, his cousin's life improved dramatically after he stopped drinking, and that influenced the individual to also stop drinking. The individual testified that abstinence has had positive effects on his life also. *Tr.* at 124-128. He stopped using marijuana in high school and last used drugs in 2000, and does not intend to use drugs again. *Id.* at 129-133. He explained that he attended sessions with the counselor on site rather than attend AA because of his busy schedule: he rises at 4:30 a.m., drives to work (about two hours from his job), returns home, drives to college classes at 6:00 p.m. and then returns home at 9:30 p.m. *Tr.* at 136. The individual asked to leave the room when the forensic psychiatrist began to discuss the effect of his daughter's death, and was visibly upset prior to exiting the hearing room.

D. Evidence of Rehabilitation and Reformation

Both psychiatrists agreed that five years of not using the drug ecstasy demonstrated adequate evidence of reformation from the diagnosis of substance abuse. They also concluded that the individual had abstained from alcohol for 18 months at the time of the hearing and that his alcohol dependence was in remission. However, the DOE psychiatrist did not find that the individual presented adequate evidence of rehabilitation or reformation from alcohol dependence because he did not consider the individual's treatment program adequate. *Tr.* at 109-116. The forensic psychiatrist was quite satisfied with the individual's current treatment program and opined, for the reasons set forth above, that the individual is

in sustained full remission with adequate evidence of rehabilitation or reformation. Tr. at 85.

In a Part 710 proceeding, the Hearing Officer gives great deference to the expert opinions of mental health professionals regarding rehabilitation or reformation. See *Personnel Security Hearing*, Case No. VSO-0476, 28 DOE ¶ 82,827 (2001). In this case, the experts agree that the individual has abstained from alcohol for 18 months as of the date of the hearing, but, as explained in the previous paragraph, they disagree on the issue of rehabilitation. After reviewing the record, and assessing the credibility of the individual and the other witnesses at the hearing, I conclude that the individual has presented adequate evidence of rehabilitation from the diagnosis of alcohol dependence.

First, there is evidence in the record that the individual has abstained from alcohol for 18 months. Both psychiatrists believed the individual's account of his abstinence, and all of his drug and alcohol screens have been negative. Abstinence alone is important, but I find it especially significant in this case because the individual has maintained his abstinence while enduring the terrible tragedy of losing a child. The depth of his grief was very evident during the hearing when he became visibly upset at the mention of his daughter and asked to leave the room while the forensic psychiatrist testified about her death. Second, the individual maintains a close, therapeutic relationship with his alcohol counselor, who has counseled him in a treatment program for almost one year (at the time of the hearing), and has concluded that the individual is rehabilitated and has a very low risk of relapse. The individual and the counselor intend to continue his treatment program. Third, the individual has had no alcohol-related incidents since his DUI in 1999 at the age of 22, approximately six years prior to the hearing. Finally, the individual's alcohol incidents and heavy drinking occurred while he was very young and immature, i.e. as a high school student and a young soldier.

After evaluating the evidence in this case, I find that the individual has mitigated the security concerns of Criteria J. Because the security concern inherent in Criterion H was based on the existence of a diagnosis of alcohol dependence, that concern has also been mitigated because the underlying condition is in full remission. As regards Criterion K, the individual has not used drugs in five years and his drug use then was minimal. Both psychiatrists found that he no longer uses drugs and that he is showing adequate evidence of reformation from drug abuse. Based on the above, I further find that the individual has mitigated the Criterion K security concerns.

II. Conclusion

As explained in this Decision, I find that the DOE Operations Office properly invoked 10 C.F.R. § 710.8 (h), (j), and (k). However, the individual has presented adequate mitigating factors for all of these criteria that alleviate the legitimate security concerns of the DOE Operations Office. In view of these criteria and the record before me, I find that granting the individual's access authorization would not endanger the common defense and security and would be consistent with the national interest. Accordingly, I find that the individual

should be granted access authorization. Any party may seek review of this Decision by an Appeal Panel under the procedures set forth at 10 C.F.R. § 710.28.

Valerie Vance Adeyeye
Hearing Officer
Office of Hearings and Appeals

Date: February 10, 2006